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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,724	12/16/2003	David Kusuma	131087-M200	3679
7590 08/18/2008 DENNISON, SCHULTZ, DOUGHERTY & MACDONALD Suite 105 1727 King Street Alexandria, VA 22314-2700				
EXAMINER CASTELLANO, STEPHEN J				
ART UNIT 3781		PAPER NUMBER		
MAIL DATE 08/18/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/735,724

**Applicant(s)**

KUSUMA ET AL.

**Examiner**

/Stephen J. Castellano/

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.59, 60, 62, 70-82 and 84-91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.59, 60, 62, 70-82 and 84-91 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 2-58, 61, 63-69 and 83 have been canceled. Claims 1, 59, 60, 62, 70-82 and 84-91 are pending.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 59-60, 62, 70-82 and 84-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovell in view of Mikol.

Lovell discloses a collapsible container comprising a base 24, a top ring 20 and a wall peripherally fixed to the base and top ring and extending therebetween, there is an expanded and a collapsed positions, the collapsed position has the top ring surrounding the base in an outwardly spaced substantially concentric relation, the wall comprises multiple sections, the sections fold on each other with flexure zones located between each of the sections and are concentrically received generally between the base and top ring. Lovell is capable of partially expanding by moving at least one of the sections to an expanded configuration without moving all sections to the expanded configuration. Lovell discloses the invention except for the sections angled alternately outward and inward relative to the container interior when the container is fully expanded. Mikol teaches containers as shown in Fig. 13-18 that have an expandable spout of a bellow type shape similar to the walls of Lovell and the present invention. Mikol's spout has an outlet end smaller in configuration than a lower end connected to a top wall of a molded container, the outlet end is comparable to Lovell's base and the lower end that meets the top wall is comparable to Lovell's top ring. As shown in Fig. 12, a pleat 46 is made thinner and more

flexible than adjacent wall sections 34 and 32 which are made thicker (limited flexibility as compared to the pleat). Figures 15 and 18 show an expanded position of the spout wherein the wall sections between the outlet end and lower end are angled alternately outward and inward relative to the container interior. Figures 14 and 17 show a collapsed position wherein the outlet end is concentrically located within the wall sections and the lower end of the spout. It would have been obvious to modify the wall of Lovell to have its sections angled alternately outward and inward relative to the container interior when expanded as a matter of design choice in choosing a wall with a different corrugated appearance to appeal to consumer's aesthetic desires or to form a wall that maintains the expanded or collapsed positions more securely preventing inadvertent collapse or inadvertent expansion.

If it should be deemed that the walls of Lovell as modified by Mikol are too thin to be self-supporting or too thin to adequately be held by a consumer's fingers or hand without collapsing, then it would have been obvious as a matter of well known and commonly used engineering principle to increase the thickness of the wall sections as well as the flexure zones so that the wall is more stiff and stronger and the wall is (1) self-supporting and (2) strong enough to withstand the compression of fingers or a hand when held and gripped by a consumer. The increase in thickness would maintain the thicker wall sections as compared to the thinner flexure zones as taught by Mikol.

Re claim 59, the wall of both Lovell and Mikol have at least three sections and four flexure areas. A positive force is necessary to expand and collapse the container. Mikol discloses partially expanded positions in Fig. 3A, 5-7.

Applicant's arguments filed May 15, 2008 have been fully considered but they are not persuasive.

Applicant suggests that the rejection was based improperly on the level of skill. Applicant directs attention to the portion of the motivational statement which states that a common engineering principle: Increasing wall thickness and flexure zone thickness will yield a stronger and stiffer wall. This statement doesn't designate a level of skill. Even someone of little skill, that is, someone unfamiliar with the molding of plastic or someone with no engineering knowledge would understand that a thicker wall and a thicker flexure zone will make the wall stronger and stiffer.

Applicant requests documentary proof of the motivation. This request doesn't clear set forth what exactly needs to be proved.

Applicant also argues that the modification would change the principle of operation. However, the principle of operation doesn't change. An expandable part still expands. The orientation of the flexure zone and the wall sections that adjoin these flexure zones change in dimension and spatial orientation. Applicant doesn't specify how the principle of operation would be changed.

Applicant may look to the detail view of Fig. 12 of Mikol to gain further understanding of how the flexure zone and the wall sections between flexure zones are changed. Both the wall sections and the flexure zones are curved or contoured. Also, the wall thickness in the flexure zone and the wall sections vary depending on location in the flexure zone and in the wall section based on proximity to the flexure zone.

The examiner doesn't believe that exact wall thickness and dimensions of the wall section and flexure zone must be strictly adhered to as applicant seems to believe. Rather, the proportional dimensions shown in Fig. 12 of Mikol could be used to thicken a wall or weaken a wall. As long as the changes are not of a drastic nature, the wall's operation such as reverse folding should remain the same. However, drastic changes in wall thickness would drastically change the flexure zone behavior and the overall strength of the wall. It is noted that Mikol doesn't recite exact dimensions. It is concluded that a range of dimensions exist where slight dimensional variation can be accomplished without the wall operation being hampered or eliminated such that reverse folding would still be performed.

The comments made to rebut the remarks filed June 15, 2007 are still deemed appropriate:

Applicant directs attention to the teaching in Lovell in col. 2, lines 60-61, which states "the pleats are sharply creased and are slightly thicker than the sides of the pleats." It is noted that the word "slightly" is used. It is also noted that this slight difference is not evident when viewing the cross sections of Fig. 1 and 5. The top ring and base have sides that actually appear thicker by a factor of at least three times as viewed in Fig. 1 and 5 while there doesn't appear to be any difference in thickness when the intermediate or middle side sections are compared to the pleats of flexure zones.

The rejection has been modified with a well known engineering principle of increasing thickness to increase stiffness and strength. Mikol's collapsible pleated wall is self-supporting and doesn't collapse due to the weight of fluid transfer through the spout. The strength in the radial direction of the Mikol flexure zones is derived from a unique shape of the flexure zone

having both concave and convex curves which reinforce the flexure zone in a radial direction while allowing collapse and expansion in an axial direction. The strength of Mikol's flexure zone is strong enough to be self-supporting even though the wall thickness is thinner at the flexure zone by a degree of 2-3 times (as viewed in Fig. 12 of Mikol) the comparable thickness of the wall section.

For these reasons, the modification of the flexure zone to be thinner in wall thickness than the wall section does not render Lovell unsatisfactory for its intended purpose. The modified Lovell container would still be self-supporting in both erected and collapsed configurations and be able to be gripped by a consumer or supported by a consumer without the radial collapse of the drinking cup.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc